

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FIDELITY INSURANCE COMPANY, et al.,)

Plaintiffs,)

vs.)

EXPRESS SCRIPTS, INC., et al.,)

Defendants.)

Case No. 4:03-CV-1521 SNL

ORDER

In accordance with the Memorandum filed herein this date,

IT IS HEREBY ORDERED that Defendants' motion (Doc. #204, filed Feb. 5, 2007) be, and is, **HEREBY GRANTED IN PART**. Plaintiff's claims under Count III: Breach of Fiduciary Duty and Count VIII: Accounting **SHALL BE DISMISSED *entirely***. Plaintiffs' claim alleging the use of First Data Bank as a pricing source **SHALL BE DISMISSED *as it relates to*** Count I: Breach of Contract. Defendants' motion is **HEREBY DENIED** in all other respects.

IT IS FURTHER ORDERED that **THIS CAUSE SHALL PROCEED** as to:

Count I: Breach of Contract,
Count II: Breach of the Implied Covenant of Good Faith and Fair Dealing,
Count IV: Fraud,
Count V: Negligent Misrepresentation,
Count VI: Conversion, and
Count VII: Unjust Enrichment.¹

So Ordered.

Dated this 27th day of March, 2008.



SENIOR UNITED STATES DISTRICT JUDGE

¹Since the filing of the subject motion (Doc. #204), Plaintiffs' claim relating to the unlicensed rendition of DUR services has been voluntarily dismissed. *See* Doc. #267, filed Jan. 2, 2008. Accordingly, Defendants' motion as to the same shall be denied, as moot.